

Chapter 6

Constructing Legal Narratives: Client-lawyers' Stories

Flora Di Donato¹

In this chapter, I would like to look at some characteristics of legal narratives within judicial proceedings. The underlying research interest is to investigate the contribution of *lay people* in constructing legal meanings. In other words: how the client takes part in the construction of his or her case in collaboration with the lawyer, and how the client's (cultural) representation of the facts is able to affect the way in which a legal story is presented by the lawyer in court.

The chapter is oriented towards a psycho-socio-cultural perspective that considers stories as “a way of world-making” in legal contexts. A major source of inspiration for choosing this approach to the study of legal narratives has been the works by Jerome Bruner—also in collaboration with Anthony Amsterdam (Amsterdam and Bruner 2000). His most important contributions to the Legal Storytelling movement concern some fundamental epistemological aspects.² Bruner (1991; 2002) claims that the narrative structures of the mind are the same in the context of the everyday as they are in the context of law: stories in literature and stories in law can accordingly be considered alike, in that both always involve the activity of constructing the reality narrated. In fact, according to his perspective, human beings actively construct social reality through narrative negotiations of daily meanings that are deeply rooted in culture (Bruner 1990).

This study intends to be an application of this type of approach. It focuses on the socio-cultural relations from which (legal) narrations are originated within the legal context. A qualitative analysis of several labor law and family law cases is complemented by interviews with clients and lawyers, thus making it possible to investigate the roles of those actors in constructing the legal facts, as

1 Some of the ideas formalized in this chapter have been discussed during participation in two annual meetings: the First National Congress of the ISLL (Italian Society for Law and Literature), Bologna, May 2009, and the Joint meeting “Complexity, Conflicts, Justice: 20 Years of Sociology of Law,” held by the Oñati International Institute for the Sociology of Law, July 2009. The chapter is particularly supported by a new data corpus.

2 Professor Jerome Bruner is known as one of the most important psychologists of the twentieth century. Over the last two decades, he has brought cultural psychology to bear on the study of the law in context. For further details on his psychological works, see Di Donato (2009a; 2009b).

well as some of the aspects of the relationship between them. Thanks to several examples, it is possible to trace the development of the legal narratives from the client's representation of the daily facts to the lawyer's legal definition. It starts by referring to some of the pre-existing and most recent studies on legal storytelling and their influence on legal theory. This is followed by a discussion of a "constructivist perspective" applied to the legal discourse, with a focus on the role of human beings in producing legal meanings. Subsequently, this chapter will try to answer two questions: Where do the legal stories come from? Which kinds of violation are able to provoke a legal narrative? The structure of a story will be illustrated, and the results of a qualitative analysis shown. The second section of the chapter will focus on the client's and lawyer's role in constructing the legal story. Emphasis will be given to the client's initiatives within the relationship with the lawyer, as well as the opportunity for him or her to have a "voice" within the judicial proceeding. Finally, I will discuss the findings, highlighting the different characteristics of the lawyer's discourse in relation to the client's.

Storytelling and Legal Studies: A Brief State of the Art

The consideration of stories within judicial proceedings as narratives is typical of a postmodern approach to the study of law that integrates the appeals coming from the world of law with those from the world of literature, literary criticism, philosophy and theory of law. This is the Law and Literature movement,³ which originated in the United States but has recently become more widespread and recognized in both European as well as Italian cultural, scientific and academic spheres.⁴ It is well known that this movement was founded with the aim, on one hand, to give jurists a literary and humanistic sensitivity (*law in literature*), and on the other, to invite jurists to a critical reading of the law through the use of literary techniques for the interpretation of legal texts (*law as literature*). In a more recent phase, it has been orientated towards the consideration of *law as narrative* or *law as narrative construction*.⁵ In fact, one of the main purposes of the Law and Literature movement is to bring to the attention of scholars the relationship between the legal text and the narrative process through which the law itself is originated as a legal and human experience.

Since the beginning, the study of legal-judicial narratives has seemed to follow, to a certain extent, an autonomous path, making use in many cases of the

³ For a brief description of this movement, see Minda (1995).

⁴ For the most recent developments of the Law and Literature movement in Italy, see Mittica (2009).

⁵ It worth considering, as examples, the works of Cover (1983), Ost (2004), and in a constructivist perspective, Bruner (2002) also in collaboration with Amsterdam (2000). From the same perspective, it also worth considering Di Donato (2008a; 2008b; 2010) and Sherwin (1994).

contribution of social psychology. At the beginning of the 1980s, Bennett and Feldman (1981) carried out a study that introduced for the first time the theory—not without criticism—that the “effective” representation of a case in court depends above all on the storytelling ability of the legal actors (accused, lawyers, witnesses). According to Bennett and Feldman, jurors tend to base their decision on an evaluation of “plausibility” and “coherence” of the stories narrated, as well as considering them on the whole rather than on the verification of the truth of the facts.

In 1989, there was a symposium at the University of Michigan dedicated to Legal Storytelling. It was an event that scholars judged as “significant,” considering it to be an indication of the opening of the Law School to a different approach to law. The stories narrated in a trial, in addition to representing the “diversity” (men/women, white/colored), have the power to represent the “reality” to start from different points of view (individual, social, cultural, legal) from which they are informed.⁶

In fact, following the important season of American legal realism, which had the merit of drawing attention to contexts of production of legal decisions, the influence of the Law and Literature movement will be a decisive turning point of legal studies in a more definite direction, represented by a growing interest in understanding the connections between human-daily dimensions of legal problems and the practices of law. The efforts of scholars aim to understand how “daily problems” are translated into legal cases. This deals with the postmodern awareness that the law should consider more definitely the “life of people” it is aimed at. Lawyers are encouraged to personalize client’s stories, to tell their story rather than resorting to “typical stories.” Judges are invited to consider the context in which the case is constructed and recognize the story that every part presents as “unique.” In summary, legal studies have focused more definitively on the narrations used by lawyers and judges, as well as anyone else within the legal system contributing to the creation of legal meanings.⁷

This change of direction in legal studies will also determine the confirmation of a new orientation of studies that will signal the founding of the Lawyering Theory Colloquium (1992), thanks to the support of contributions coming from other disciplines. A significant contribution is due once again to the fruitful association between the theory of law and (social and cultural) psychology.⁸ I am referring in particular to the noteworthy work of Amsterdam and Bruner, *Minding the Law*,

6 For the acts of the symposium, see *Michigan Law Review*, 87 (1988/89). See also *Vermont Law Review* (special issue): “Lawyers as Storytellers and Storytellers as Lawyers: An Interdisciplinary Symposium Exploring the Use of Storytelling in the Practice of Law,” 18(3) (1994).

7 We could date the narrative “paradigm shift” to the appearance of a collection of essays, “On Narrative” (ed. W.J.T. Mitchell), drawn from *The Critical Inquiry Journal* (1981).

8 See Bruner (1992).

published by Harvard University Press (2000). The book, which is considered a “turning point” in the study of judicial storytelling, considers the law as “a storytelling enterprise thoroughly entrenched with culture.” In fact, the aim of the authors is to explore the underlying relationships between the judicial opinions (of the American Supreme Court) and the American culture of which they are considered expressions.

Stories as “a Way of World-making”: An Interdisciplinary Approach

Stories and narrations are essential in the context of legal-judicial proceedings as they represent the main tool for organizing and interpreting the pieces of information, fragments of reality that can be *reconstructed* as a coherent order of data—in other words, “facts” (Twining 2006; Taruffo 2009b).

However, to tell a story is not just a way to give a (legal) order to the reality violated by infractions, violations. According to a constructivist epistemological approach, to tell a story (even a legal story) means “to shape reality” within a cultural frame: “knowledge is never ‘point-of-viewless’” (Bruner 1991, 3). In fact, starting from Vygotsky’s ([1934] 1962) concept of the language as a “cultural product,” the anti-positivist Bruner’s position is that “cultural products, like language and other symbolic systems mediate thought and place their stamp on our representations of reality.” Therefore, the narration represents the key to resolving the problem of “the translatability of knowledge from one culture to another” (Bruner 1991, 3).⁹ In a constructive-culturalist perspective, the “world” is not defined as simple “reality,” but rather the “meaning” that the people attribute to it. It is a non-individual process, carried out within a community whose members can communicate and interact together, assuming a common ground that emerges from the social exchanges (on the basis of scripts, stereotypes, common meanings and so on) (Bruner 1990).¹⁰

They are the stories, narrated in both daily and institutional contexts (such as legal and judicial ones), making the cultural cohesion and creation of legal meanings possible (Bruner 1990; Bruner 2002). It is a process that is not automatically imposed from “above” by the State and the other institutional representatives (judges, lawyers, professors), but comes from the “bottom” (Cover 1983), from the “ordinary” people (Merry 1992), the human beings, all those people who have an “active” role in the construction of the social and legal reality of which they are part. Naturally, meanings negotiated and given by individuals to their world become patterned, established, objectified in virtue of the rules, the role of the institutions (courts, legal offices, schools, laws, codes and so on). They “bridge”—according to a well-known metaphor by Cover (1983)—between the

⁹ See also White (1980–81), 10.

¹⁰ See also Bruner, “Culture, Mind and Narrative” (unpublished).

starting reality, intended as cultural visions, and the “possible” and “alternative” social and cultural constructions of reality.

Where Do (Legal) Stories Come From?

What are the origins of a (legal) narrative, and what phases does a “human story” pass through in order to evolve into a “legal story”?

The story starts from the moment of the breaking point of a legitimate situation (Amsterdam and Bruner 2000), which can correspond, simply, to a violation of a cultural script which, for example, has to deal with behavior that normally is held or we imagine we must hold when we are at the post office or the restaurant, or that (more probably) can have to deal with the violation of a rule of law. For example, Mister X hasn't stopped at a red traffic light; Mister Y has been unfaithful to his wife; the Company X has given inferior duty to Miss Y, rather than the once set out in the contract.

It is easy to observe that, either in the case of the infraction of a behavior rule, such as “queuing at the post office,” or in the case of the violation of a rule of law—like the reciprocal fidelity obligation (set out in Article 143 of the Italian Civil Code)—we are in the presence of meanings that we assume to be prescribing rules in the context of a culture.

Not every trouble that disturbs the legitimate order of reality is able to start a legal narrative (Amsterdam and Bruner 2000, 129–31). As is well known, remarkable violations of the law can be determined only with reference to the rules of law within a specific legal system: the trouble needs to be transformed into a recognizable legal problem.

Let us consider a typical plot of a (legal) story¹¹ (Amsterdam and Bruner 2000, 113–14):

1. *an initial steady state grounded in the legitimate ordinariness of things:*

In 1999, a dear friend and colleague, who I meet while working as an intern in an important Neapolitan office, invited me to come and work as a manager of monitoring and accounting of the management of European Funds. He introduced me to the general director of the “territorial agreements” (drawn up between the council and province) and we started to collaborate in managing these funds. In the space of two years, we managed to spend eight hundred million funded by the European Union without wasting any public money. In a very closed environment, we became “market-leaders”. We received calls from everywhere [in our region], even from very difficult contexts in the province

¹¹ Nunzio's story: a respected professional who becomes part of a team of experts managing European funds for Italy. Nunzio becomes a victim of mobbing and exclusion from the workplace by his colleagues.

of Naples. It was informally organised, we were four professionals: a general director, an administrative director, I was nominated general coordinator.

2. that gets disrupted by a Trouble consisting of circumstances attributable to human agency or susceptible to change by human intervention:

The relationships [among colleagues] that were also highly emotional, at a certain point, started to deteriorate. The administrative director, at a certain point, wanted to take over as the general director (the boss), he was bored with being the number two. In the meantime, a fifth person had entered the group, a woman, who was having an extra-marital affair with number two. This woman saw number two as a way to make rapid career progress. Number two loses his head—*notwithstanding my insistence and requests for a more sober behaviour*—he buys a €50,000 car, holidays, jewellery. In particular, he violates the pact to not make any deals with local politicians.

Last year, on the 24th July, by complete surprise, he called the six partners of the firm together and obtained the unjustified dismissal of number one, being subsequently nominated in his place. I was replaced.

3. in turn evoking efforts at redress or transformation which succeed or fail:

On the 25th July as part of my duties as secretary of the meeting held on 24th July, I faxed all the partner agencies, as well as the President of the Board of Administration, a copy of the minutes of the meeting and invited the mayors as well as the President “to give any opinions...with the aim of not prejudicing the rights of the partner agencies”. The following day, the President of the Board replied warning me

4. so that the old steady state is restored or a new (transformed) steady state is created:

The organizational set up was subsequently modified, I was assigned an exclusively internal role, which I was not interested in. I was also asked to be more flexible, to meet the needs of politics. I am also literally asked “to behave”. Obviously, I didn’t accept. All my duties are subsequently taken away.

5. and then story concludes [...] with a “coda”:

I do not know how to be dishonest.¹²

The articulation of Nunzio’s story, according to the model proposed by Amsterdam and Bruner (2000), highlights how a narration is made up of a particular sequence of events in which human beings are the protagonists who behave as “actors”, with “intentions”: Nunzio and his colleagues. The events and characters that exist in reality acquire specific meanings within the narrative plot: the protagonists (the antagonists) are described by Nunzio as “number one,”

12 This is the transcript of the story narrated by Nunzio during the interview.

“number two,” according to their hierarchical position within the professional context and their specific aim of having a successful career. The story is provoked by the violation of the legitimate initial situation. In this case, it is not only the violation of the rules of law, but also the behavior rules among the protagonists (rule of loyalty and correctness in the relationships between colleagues). The narration is an attempt to restore the status quo: the mediation between Nunzio and his colleagues will not be enough; they will have to go to a lawyer.

Narrations and (Social) Relations: A Qualitative Analysis

Nunzio's story, as described above, is part of a much larger corpus of data that deals with labor law and family law cases, analyzed in the first degree. The aim of the research¹³ is to describe the stories in terms of socio-juridical relationships within the legal context in order to show that the construction of legal meanings is a normative process permeated by social relations.

The investigation focuses on the analysis of the official documents as well as the transcripts of interviews with clients and lawyers. The analysis is complemented by the client's notes (a written record drafted upon request of the lawyer containing all the information and details of the case for which legal advice is sought). Starting from the results of the research, it seems that the trouble—what provoked the narration—can have its origin within a relationship between two or more interacting actors who do not share the same representation of reality. It can be a case of mobbing,¹⁴ within the professional context—as we see in Nunzio's case—but it can also be a matter of the separation dynamic between spouses, conditioned, if not also determined, by conflict in the enlarged family context. The trouble seems to flow, every time, from a tension or from a conflict between the different intentions of the protagonists of the narrative plot. Specifically in the labor law cases, we deal with the tensions that relate to the definition or redefinition of the roles played by the protagonists, about their hierarchical position within the company context, for instance. All the actors present on the scene can be involved, and normally they are, from the co-workers to the addressees of the professional

13 This research line has been developed since the doctoral work co-tutored by the University of Naples and the University of Neuchâtel during the years 2003–2007; Di Donato (2008b).

14 A typical case of mobbing can be instigated either by the employer (with or without the support of the other co-workers) or by the co-workers themselves, with the latter isolating the unwanted colleague (this being described as *horizontal mobbing*). The collective Italian contract of state dependants of February 28, 2003, art. 6, defines mobbing as “moral or psychic violence in the working environment, effected by the employer or by other employees and characterized by acts, attitudes or behaviors repeated time after time with aggressive, defamatory or oppressive connotations.”

services (who can include the company clients as well as the patients of a medical structure).

Several parts of Angela's story are reported below as an example. She was a psychotherapist in a healthcare structure, and was a victim of mobbing carried out by her employer (Example 1) and supported by her co-workers (Example 2):

(1) My relationship with XXX (employer) worsened [...] from the moment I told him what I didn't like about him [...]—*Angela* writes in a note—I burst into tears in front of the group due to the highly delicate moment with my relationship with him (I felt that he is being vindictive) as well as the fact that I was passed over for promotion, in addition because certain dis-confirmations should not be made in public in front of interns [...]. I think it was at that point that XXX's (employer) revenge started, criticising my professional figure in front of the students

(2) My co-workers—*Angela* writes—underestimate my work with patients, ridiculing the way it is carried out [...]; my co-workers' attacks were so devaluating that they created disappointment and worry among the interns who didn't really understand what was happening among the other members of staff.¹⁵

In Angela's case, just as in Nunzio's (seen above), the network between the human and professional dimension dominates the whole to the point that the trouble is determinant in complicating the social and professional relationships within the working context.

The network of problematic relationships, extended to a family context, is also evident in the stories of Fernanda and Tiziana, which will be described briefly. They are similar cases of separation crossed by networks of invasive family relationships that have greatly influenced the dynamics within the two couples.

Fernanda's story is described in a brief extract from the memorandum given to her lawyer:

Our story started about 23 years ago. From the very beginning, I had problems with his family, especially the mother, who did everything to try and create misunderstandings. Armed with a photo of me, she went to fortune-tellers and priests to see whether our love was the result of a curse. Given our age, Nicola's parents, in an attempt to stop us seeing each other, didn't let him use the family car and stopped giving him pocket money. [...] In the summer of XXX, I decided to leave Nicola because I could no longer stand the mother's oppression who

¹⁵ Angela's note is taken from the private legal documents in the possession of the legal studio dealing with the case.

would not accept our relationship and even less our marriage but also because Nicola had not made a decisive stand.¹⁶

Even in *Tiziana's case*, the interview with her lawyer confirms the bond between family relationships and separation dynamics, so much so as to influence the reconstruction of the story that the lawyer attempted in order to carry out judicial proceedings.¹⁷

It seemed as if I was divorcing the family [...]. In particular, there was the hindering presence of the mother who had even interfered in the reconstruction of the events: I asked the clients questions and the mother replied. The whole judicial proceeding was carried out with the continual anger of the mother being expressed due to the fact that in the house where the couple had decided to live—subsequently occupied by the husband—there was still her dowry which seemed to be that of “Princess Diana” [...]. The case was closed with the settlement which included the mother regaining possession of the dowry [...].¹⁸

Narrations and Representations: The Client's Role

In a constructivist perspective, “much of human reality and its ‘facts’ are not merely recounted by narrative but *constituted* by it” (Amsterdam and Bruner 2000, 111). Judicial facts are not part of the trial *sub specie* of empirical reality, but as “fact narratives” (Taruffo 2009b), or rather as objects of complex linguistic products resulting from the negotiations-interactions between the actors on the definition of reality (Di Donato 2008b).

The “trial” becomes “the place” where the narratives are presented and compared, “constructed” starting with the “roles” carried out by the legal storytellers.¹⁹

In this section of the illustration of the research, I want to deal with several profiles that are involved in the role carried out by the “legal actors,” as well as the type of activity that is carried out during or in function of the judicial proceeding in order to produce “versions,” “descriptions” or “reconstructions” of the judicial facts.²⁰

16 Fernanda's note was given to me by the client when interviewed.

17 In this case, for reasons of privacy connected to professional and private life of one of the partners, it was not possible to interview the client in person.

18 This is a transcription of an excerpt of the interview with Tiziana's lawyer.

19 The idea of the trial as a form of “social interaction” patterned on the basis of the roles carried out by the actors who intervene in the dispute has been adapted by Abel (1974). The specific relationships between lawyers and client and the use of narratives were investigated by Elmann et al. (2009).

20 The trial procedure has been understood here from a sociological perspective as the “totality of social actions pertaining to the dispute until it is settled by decisions

I am not only referring to “institutional roles,” as in the case of the judge (who will not be considered here²¹) and the lawyer, as well as the phases of the judicial proceeding in a strict sense. I will also consider the “informal roles,” such as the role carried out by the client in collaborating with his or her lawyer in (re) constructing the judicial facts.

The first stage of constructing the story in the judicial proceeding is represented by the story proposed by the client to his or her lawyer. Examination of several judicial stories—with examples given above—highlights how the client (whose role is completely ignored in classical analysis) under certain conditions (social, cultural, professional) is capable of actively participating in the construction of his or her own case, thus conditioning the results.²² The client is not a mere information giver in the trial, but is capable of the following roles.

He or she can give detailed information to the lawyer, not only about his or her own professional conditions, but also the general working context as well as the organization of the relationships between the employer and the co-workers, for example in Angela’s case:

The “clan” is headed by XXX (employer)—Angela declares in a note. XXX is the therapist to the five founding professors of the health-care structure, who in turn are therapists to the new associate professors who are therapists to all the students YYY. All the students YYY must choose a professor ZZZ as therapist. This allows XXX to control every single student enrolled.

The client can give information that can relate to the legislative discipline of a specific working sector (this the case of a school headmaster who was well informed on the legislation of his own area), as in Franco’s case:

Apart from the merits and reasons of the case what is required, from my point of view and my reading of the sentence—Franco writes in a note—is merely to ask that the rules of law laid down 31st March be respected, not the ministerial decrees: A SUSPENSION BY THE JUDGE IS NECESSARY TO ALLOW ME TO PRESENT MY APPLICATION FOR HEADMASTER BY NEXT 22nd MAY. OTHERWISE IT IS ALL A WASTE OF TIME!!!²³

resolving it in a more or less contingent or conclusive way”; Ferrari (1993).

21 For the specific treatment of the role of the judge in the construction of the facts in the judicial proceeding, see Di Donato (2008b), 183–202; see also Taruffo (2009b).

22 On the active role of the client in the negotiation of the dispute, see Haavisto (2002), 165–246.

23 Franco’s story is illustrated in Di Donato (2008b), 145–6.

The client can also take “initiatives”²⁴—he or she can ask questions, trying to give an interpretation to his or her own case (Example 1), express doubts and reservations (Example 2), make assertions and assumptions (Example 3), and suggest possible strategies to the lawyer (Example 4), as in Laura’s case (victim of mobbing):²⁵

(1) [...] can the company, regardless of its assessment of work (whether it’s right or wrong), behave like this? Can they act and react in such a way? Can they assent to leave and then throw it back in my face? Isn’t this mobbing?

(2) to me XXX’s persecution became apparent not just because of two consecutive official medical checks at home in four days of sick leave [...], not only from the day and time this communication was sent, but also and especially because the mail didn’t say that I’d be XXX but listed just three roles making up the completely undefined position of “XXX”

(3) XXX’s mail was obviously to cover her/himself [...]; it’s obvious that their position is and will always be to show that my sick leave was and is the cause of the professional problems that were cause for complaint, and not, which is the case, a consequence [...]; the mail message is a falsehood as regards a central point

(4) we should take advantage of the situation to “nail” XXX [...] I mean underline the fact that Manager XXX asserts that procedure counts for nothing

....²⁶

The client can also participate in the execution of strategies, agreed upon with the lawyer, during the phases preceding the trial (from the writing of e-mails to the employer to the registration of conversations), as in Laura’s case:

with the lawyer XXX—*Laura* declares—we decided that the first move was to completely remove this request for my resignation [...]. We decided to send this e-mail in which I officially told the head of personal and the managing director that I had been underutilised, that I had mentioned this to my direct superiors and that nothing had changed.²⁷

24 Haavisto refers to client’s *initiatives* as a key tool for the analysis of the client’s attempts to participate in the negotiation of the dispute; Haavisto (2002), 170–72.

25 For further details on client’s initiatives, see Di Donato (2008a).

26 Examples 1–4 are taken from e-mails written by Laura to the lawyer. Laura’s story is illustrated in Di Donato (2008b), 122–45.

27 In particular, see *ibid.*, 126.

The examples highlight how the client, under certain conditions (social, cultural, professional), can be considered a “legal actor” capable of participating and influencing, in collaboration with his or her lawyer, the execution of the legal strategy to the point of the legal claims being accepted.

Nevertheless, from the point of view of the “representation” of the events, the client’s story tends to be a “naive representation,” at least during the first phase. It is only due to the comparison with the lawyer that he or she can truly and fully represent what is happening, within the professional context, for example in terms of legal violations.

In the cases examined—I am not only referring to cases of mobbing, but in general to a situation that has to do with the violation of the rights—the representation that the protagonist/client has of the trouble is full of emotional meanings. People talk about trauma, drama, abuses, humiliations, betrayal, with the following examples:

(1) [...] it could be seen that on my face there was something traumatic [...] this person (the employees boss) has told me such incredibly severe things; who could ever have imagined it—*Laura* says during the interview.²⁸

(2) I didn’t felt comfortable during the conversation with the President of the Law School—*Nancy* says—I felt abused.²⁹

(3) I feel betrayed as a patient—*Angela* writes—I feel betrayed as a professional: trusting him blindly. I feel humiliated as a person: because he doesn’t value what I think or do. I’m attacked whatever I do. In this context, it’s not enough to behave differently, they also want you to be convinced. They want you to sell your soul.

The examples highlight that the first signs of the trouble have to do with an emotional perception of the facts from the side of the private citizen—lay people. It is possible to claim that the narration is induced from the representation of the reality that is set on emotional terms. Indeed, emotions do not only relate to the affective dimension, which is not separable from the comprehensive identity of a person, but they are an integral part of its cognitive activity. Probably, they are the mover of it (Nussbaum 2001).

The Transformation of an Everyday Story into a Legal Case: The Lawyer’s Role

This section highlights several of the elements of the transformation of the story proposed by the client into a legal story, upon resorting to a lawyer.

²⁸ See *ibid.*, 133.

²⁹ See *ibid.*, 136.

An element is the way in which the emotional dimension of the trouble that provoked the narrative process, starting from the client's story, can become part of the legal narration. Traces of the client's emotions are in the lawyer's claim, where, for example, the dangerous effects provoked by the professional discomfort (that might have been of such seriousness for the psycho-physical health of the worker as to have pushed her to resignation) are illustrated. There are still traces in the part where the lawyer illustrates the context of the client's life, giving consideration to the family and social difficulties (besides the economic ones) that he or she is going through following the dismissal or resignation. Let us consider some examples:

(1) Those acts, along with the lack of any possible professional prospect and a substantial exclusion of the complainant—*Luciano's lawyer* writes in the claim—provoked in the aforementioned a great personal discomfort [...],³⁰

(2) Dismayed for the character clearly pretentious and illegitimate of such requests—*Stefano's lawyer* writes in the claim—doctor XXX, at the end of the conversation with doctor XXY, was complaining about a deep discomfort, by leaving his own job in advance.³¹

Nevertheless, the typical attitude of the lawyer is to “objectify” the story, asking the client to tell the story by answering questions such as “What's happened?”, asking him or her for a narration that possibly considers the indications that have to do with elements such as dates and places, the general organization of the professional context, duties performed, assignments stolen, the indication of witnesses and documents as proof, even the recording of private conversations with the employer, and so on. This therefore leads to all the happenings being re-read omitting evaluations and personal judgments with the aim of defining “Who has done what, how, when, why and where?”

In fact, the statement of facts on the lawyer's part is the central hub of the case construction. The questions of fact, along with the questions of law, represent the key phase of the transformation of “daily events” into “legal stories” through the use of rules of law and procedural rules. In this sense, according to Twining (2006), lawyers use the stories as tools to place fragments of information and single elements of proof within an ordered context that has a significant relevance for the law.

The lawyer, therefore, does not limit him or herself to narrating the client's story, but creates (with the possible collaboration of the client) a new functional story capable of winning the case.

³⁰ This is taken from Luciano's lawyer claim (art. 700 c.p.c.). The case is dealt with in more detail in Di Donato (2008b), ch. 6.

³¹ This is taken from Stefano's lawyer claim (art. 700 c.p.c.).

This is confirmed by Nunzio's story above, as retold by his lawyer, with an extract of the interview (Example 1) and the relative formalization of the legal claims (Example 2):

(1) The whole story was very mechanical and, in particular, based on a series of personal and political interests. I have tried to omit the personal aspect as well as the threats from the reconstruction of the facts, all things that actually happened. Some of the aspects of this case should not be included in the legal claim in order to show the judge that *Nunzio*, prior to being made unable to carry out his job, was already put in a difficult situation for not having succumbed to their pressure.

(2) Suddenly, in June 2008, there were "tensions", of a political and personal nature, between the management of the Agency and this subsequently lead to a series of discussions between the General Director, XXX and the Administrative Director, XXX, in relation to the approval of the budget for the year XXXX, which would have lead to a changing of the roles within the management.

The two brief descriptions that are associated to the "legal story" in Nunzio's case, confirm what Nunzio told in his role as client. In this case, the trouble that causes the legal story is provoked by the "tensions" arising from the context. However, it is worth noting that most of the interview with the lawyer deals with the legal qualification of the story. The lawyer's aim is to obtain damages as well as a series of benefits for his client, including insurance and social security payments. Further extracts follow:

(3) In this case, there is a three year contract which ends in 2009. The relationship is interrupted in September 2008 and in the contract, in the general discipline, it is set out that, upon agreement of the parties, in the case of anticipated annulment the employee will be paid in full.

(4) I have taken this particular aspect of the contract into account in order to decide whether or not "to set off" for a trial in which to establish the existence of a subordinate work relationship in order to ask to either be reassumed or for the payment of damages, along with what this would entail: insurance and social security payments etc. Otherwise, the other possibility is to stick to the clause in the contract that sets out in anticipated annulment that payment is made in full.³²

The transformation of Nunzio's story into a story that is conventionally acceptable for the law means that the lawyer's main task is to translate the "naive" representation that the client has in terms of legal violations. It is evident the role

32 Passages 3 and 4 are taken from the interview transcript with Nunzio's lawyer.

that White (1990) acknowledges to the lawyer as “mediator” or “translator” among cultural visions and languages, within the legal system.

It is also worth recalling that the “construction of the case” does not conclude in a dynamic narrative among several different representations of reality between lawyer and client.³³ The ability of the lawyer is relevant, at times due to collaborating with the client, in identifying the causal and temporal connections that contribute to giving the events contextual meanings. They are connections that are not pre-defined in nature, and are connected by a relationship of causality that is more often than not a value of mere “probability” (logic or qualitative) rather than of absolute causality, according to a proposal “It is highly likely that behavior x caused fact y” (Taruffo 1992; Taruffo 2009b).

The following extract from a lawyer’s claim is a typical example:

In May 2005, *dr XXX* informed her superior that she would be absent from work in order to undergo infertility treatment *and*, in the same month, *is substituted* on project XXX, without any explanation [...], in September 2005, *the plaintiff reports* the immediate demotion and *is asked to conclude the working relationship* by resigning.³⁴

The “evidentiary outcomes” are also determinant in the construction of the case. In the perspective discussed so far, the use of proof seems to answer the question: “How to convince the judge that the representation of the facts is the most legal plausible and cultural coherent?”

It is well known, being confirmed in the analysis of the cases, that the “evidentiary outcomes” are not used “objectively” and “impartially” by the parties (nor by the judge), but rather as “elements of meaning” that contribute to the construction of a story (Di Donato 2008b) that seems “true,” “probable” or “suitable”—according to what is considered to be the “ideal” aim that is assumed as the basis of the trial in the considered aspect³⁵—in order to obtain a favorable verdict for the party.

In conclusion, the use of social and cultural psychology has highlighted how the judicial proceeding can be interpreted as the place where meanings are not given, but are the results of a negotiatory process among the socio-legal actors involved—in the first instance, lawyer and client.

Client-lawyer’s stories are not arbitrary constructions. The events are shaped by the story that is constructed in the interaction (Ewick and Silbey 1998, 242–4). They find a form of “objectification” (Ewick and Silbey 1998) and “stabilization” (Latour 2002) thanks to the narrative processes that are culturally situated (Bruner 1991; Cole 1996; Engeström 1987).

³³ For a detailed list of the possible use of stories by litigators, in particular in jury trials, see Alper et al. (2005).

³⁴ See Di Donato (2008b), 171.

³⁵ See Taruffo (2009a).

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